

APPEAL NO. 022822  
FILED DECEMBER 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 30, 2002. The hearing officer resolved the disputed issues by deciding the following: (1) the appellant/cross-respondent (claimant) sustained a compensable injury on \_\_\_\_\_; (2) the claimed injury did not occur while the claimant was in a state of intoxication, as defined by Section 401.013; (3) the claimant did not have disability resulting from the compensable injury; and (4) the respondent/cross-appellant (carrier) waived the right to contest compensability of the claimed injury, because the carrier did not timely contest the injury in accordance with Section 409.021. The claimant appeals, disputing the disability determination. The claimant additionally appeals the finding of fact that on \_\_\_\_\_, she suffered an injury to her right wrist in the course and scope of employment "to the extent it is a comment on the extent of injury in this case." The appeal file does not contain a response from the carrier. The carrier appeals, arguing that there is no evidence to support the hearing officer's determinations on the issues of intoxication, compensable injury, and waiver, or alternatively that the challenged determinations are against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

**COMPENSABLE INJURY AND DISABILITY**

The claimant had the burden to prove that she sustained a compensable injury and that she has had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH on the disputed issues. The hearing officer could consider the claimant's testimony and the medical reports. Although the hearing officer found that the claimant sustained a compensable injury, she was not persuaded that the claimant was unable to obtain or retain employment at wages equivalent to her preinjury wage because of any injury sustained on \_\_\_\_\_. The claimant testified that she worked light duty up until about the time she was terminated. There was evidence that the claimant was taken completely off work on May 31, 2002, because the employer would not comply with light duty. The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly just. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant appeals the finding of fact that on \_\_\_\_\_, she suffered an injury to her right wrist in the course and scope of employment. The claimant maintains

that this is not the full extent of her injury and asks that the finding be modified to state the claimant sustained a compensable injury in the course and scope of her employment on \_\_\_\_\_. The claimant contends that the hearing officer erred in delineating the nature of the injury because an extent-of-injury issue was not before him. We find no merit in this assertion. We are unaware of any authority that limits a hearing officer from defining the injury where, as here, there is not an extent-of-injury issue before him or her and the claimant does not cite to any such authority. Thus, we perceive no error in the hearing officer's having determined in a finding of fact that the claimant's suffered an injury to her right wrist in the course and scope of employment. See Texas Workers' Compensation Commission Appeal No. 000838 decided June 5, 2000.

### **INTOXICATION**

Section 406.032(1)(A) provides that a carrier is not liable for compensation if the employee was in a state of intoxication at the time of the injury. For purposes of this case, intoxication is defined as not having the normal use of mental or physical faculties from the voluntary introduction of controlled substances, marijuana, into the body. See Section 401.013(a)(2). An employee is presumed sober. Texas Workers' Compensation Commission Appeal No. 94247, decided April 12, 1994. A carrier rebuts the presumption by presenting probative evidence of intoxication. Texas Workers' Compensation Appeal No. 91018, decided September 19, 1991. Once a carrier introduces evidence of intoxication, the burden shifts to the employee to prove that he or she was not intoxicated at the time of injury. In this instance, the hearing officer properly determined that the carrier did not overcome the presumption of sobriety and shift the burden to the claimant to prove she had normal use of her mental and physical faculties at the time of the claimed injury. It is undisputed that the urine specimen, which was positive for marijuana metabolites, was collected from the claimant two days after the date of the claimed injury. The claimant testified that she smoked marijuana at home the day after the injury occurred. Whether a claimant is intoxicated at the time of an injury is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950266, decided March 31, 1995. There is sufficient evidence to support the hearing officer's intoxication determination.

### **WAIVER**

With regard to the waiver issue, the Payment of Compensation of Notice of Refused or Disputed Claim (TWCC-21) reflects that the carrier first received written notice of the claimant's claimed injury on May 17, 2002. The TWCC-21 is dated June 13, 2002, and contained the following statement: "the carrier will pay income and medical benefits if, as and when they accrue subject to our further investigation as to compensability." The hearing officer found that "the [TWCC-21] was filed with the Texas Workers' Compensation Commission on June 19, 2002, a date beyond the seven day period in which the carrier is required to commence payment of benefits or dispute the claim."

In Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), the Texas Supreme Court determined that under Sections 409.021 and 409.022, a carrier that fails to begin benefit payments as required by the 1989 Act or send a notice of refusal to pay within seven days after it receives written notice of injury has not met the statutory requisite to later contest compensability. On August 30, 2002, the Texas Supreme Court denied the motion for rehearing in the Downs case. Thus, the Downs decision, along with the requirement to adhere to the seven-day “pay or dispute” provision of Section 409.021(a), became final. Texas Workers’ Compensation Commission Appeal No. 021944-s, decided September 11, 2002. Since the carrier did not agree to initiate benefits, or dispute compensability within seven days after its received written notice of injury, it did not meet the statutory requisite of Section 409.021(a) to later contest compensability. Appeal No. 021944-s, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS STREET  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Susan M. Kelley  
Appeals Judge